

DEC 01 2008

Attorney Docket No.: 403118-A-01-US (Burritt)
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
David Ray Burritt

Application No.: 10/799,423

Confirmation No.: 7122

Filed: 03/12/2004

Art Unit: 2628

For: Apparatus and Method for Providing Visual
Telecommunication Terminal Status
Information

Examiner: Richer, Aaron M.

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This brief is filed within three months of the Notice of Appeal filed in
this case on 09/02/2008.

The fees required under § 41.20(b)(2) are dealt with in the
accompanying FEE TRANSMITTAL. Also, included is the fee for an
accompanying Petition For Extension Of Time of 1 month.

This brief contains items under the following headings as required
by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- | | |
|-----|---|
| I. | Real Party In Interest |
| II | Related Appeals and Interferences |
| III | Status of Claims |
| IV | Status of Amendments |
| V | Summary of Claimed Subject Matter |
| VI. | Grounds of Rejection to be Reviewed on Appeal |

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I hereby certify that this correspondence is being facsimile transmitted to Commissioner, at fax No. 571-273-8300,
on

12/01/2008
Date Being Faxed

John C. Moran
Signature

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VII.	Argument
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Appendix A	Related Proceedings

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Avaya Inc. per Reassignment on Reel/Frame 021156/0082,
recorded 06/26/2008.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 12 claims pending in application.

B. Current Status of Claims

Claims canceled: 26

Claims withdrawn from consideration but not canceled: none

Claims pending: 2-7 and 16-21

Claims allowed: none

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Claims rejected: 2-7 and 16-21

C. Claims On Appeal

The claims on appeal are claims 2-7 and 16-21.

IV. STATUS OF AMENDMENTS

The Appellant has not amended the claims.

Accordingly, the claims enclosed herein as Appendix A incorporate the amendments indicated in the paper filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claim 2 is directed to a method for providing telecommunication terminal status information to people having at least one of poor visual acuity and poor hearing. The method recites that a telecommunication terminal (IP telephone 112 of Figure 1) via a network (WAN 111 of Figure 1) receives telecommunication terminal status information. Further, the method recites establishing (blocks 703-706 and 708 of Figure 7 and page 19, lines 22-27) direct communication with the telecommunication terminal (IP telephone 112) via the network (WAN 111) by a computer (monitor computer 118 of Figure 1) controlling a visual display (display 619 of Figure 6) separate from the telecommunication terminal. Further, the method recites that the computer via the network (WAN 111) directly accesses (block 801 of Figure 8 and page 20, lines 1-5) the telecommunication terminal status information from the telecommunication terminal. Finally, the method recites emphasizing (blocks 804 and 805 of Figure 8 and page 20, lines 17-27) the accessed telecommunication terminal status information using visual enhancement and displaying (block 806 of Figure 8 and page 21, lines 1-3) the emphasized visual telecommunication terminal status information on the visual display to a

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user of the telecommunication terminal having at least one of poor visual acuity and poor hearing.

Claim 16 is directed to a computer-readable medium (blocks 408 and 412-418 of Figure 4 and blocks 612-618 of Figure 6) for providing telecommunication terminal status information to people having at least one of poor visual acuity and poor hearing. Computer-executable instructions in a telecommunication terminal (IP telephone 112 of Figure 1) receive telecommunication terminal status information via a network (WAN 111 of Figure 1). Further, computer-executable instructions in a computer (monitor computer 118 of Figure 1) establish (blocks 703-706 and 708 of Figure 7 and page 19, lines 22-27) direct communication with the telecommunication terminal (IP telephone 112) via the network (WAN 111) and the computer (monitor computer 118) controls a visual display (display 619 of Figure 6) separate from the telecommunication terminal. Further, computer-executable instructions in the computer via the network (WAN 111) directly access (block 801 of Figure 8 and page 20, lines 1-5) the telecommunication terminal status information from the telecommunication terminal. Finally, computer-executable instructions emphasize (blocks 804 and 805 of Figure 8 and page 20, lines 17-27) the accessed telecommunication terminal status information using visual enhancement and display (block 806 of Figure 8 and page 21, lines 1-3) the emphasized visual telecommunication terminal status information on the visual display to a user of the telecommunication terminal having at least one of poor visual acuity and poor hearing.

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Claims 2-7 and 16-21 stand rejected under 35 U.S.C. § 103(a).**

VII. ARGUMENT

Claims 2-7 stand rejected under 35 U.S.C. § 103(a).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art cited must teach or suggest all the claim limitations. See M.P.E.P. § 2143. Additionally, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in appellant's disclosure. The appellant respectfully assert that the first and second criteria has not been meant and that the third criteria also has not been meant since the combination of cited art fails to teach or suggest each limitation of the appellant's claimed invention.

The Final Office Action of 05/02/2008 rejected claims 2-6 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0159574 of S. Stogel (hereafter referred to as Stogel) in view of U.S. Patent 6,975,712 of C. Schnarel et al. (hereafter referred to as Schnarel) and further in view of U.S. Patent 6,665,375, of R. Forlenza et al. (hereafter referred to as Forlenza). Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over Stogel in view of Schnarel and further in view of Forlenza and U.S. Patent 6,192,341, of C.H. Becker et al. (hereafter referred to as Becker).

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With respect to the third criteria, the Final Office Action relies only on Stogel for disclosing the steps of receiving, establishing, and directly accessing of claim 2. Claim 2 clearly recites that the steps are performed using a single network (WAN 111). In particular, a telecommunication terminal (IP telephone 112) receives the telecommunication terminal status information via this single network, and a computer (monitor computer 118) utilizes this single network for establishing direct communication with the telecommunication terminal and for accessing the telecommunication terminal status information from the telecommunication terminal. The Final Office Action states that the combination of a telephone such as telephone 133 and automatic telephone directory apparatus (ATDA) 100 into a single combination telecommunication unit is disclosed in Stogel and applicant agrees. (See last sentence, page 4 of Final Office Action.) The Final Office Action also equates server 141 with the computer recited in claim 2 and that server 141 would connect to the combination telecommunication unit via LAN 139. (See first full paragraph, page 5 of Final Office Action.) Applicant asserts that the combination telecommunication unit would receive telecommunication terminal status information from network 150 via NID 131 (Paragraphs [0040]-[0044] of Stogel) and interconnect to server 141 via LAN 139 (Paragraph [0036] of Stogel) as is also clearly illustrated in Figure 1. This assertion means that the combination telecommunication unit would receive telecommunication terminal status information from a first network but is accessed by server 141 via a second network. The Final Office Action states that LAN 139 and network 150 can be considered as a single network. (See Section 4 and second paragraph, page 4 through first paragraph, page 5.)

Consider the statements of the Final Office Action in greater detail. Section 4 of the Final Office Action states the following:

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However, as noted in previous rejections, assuming the VOIP is used, all of the communication devices would be part of the same LAN, and this LAN would be used to establish communication with the computer and terminal, and also receive status information. Essentially any data that passed from the NID would utilize some element of the LAN. In a broader sense, however, even if the VOIP is not used any devices that are connected can be seen as on the same "network", much as the Internet is considered one large network.

Applicant cannot find any support in Stogel for the premise that simply because VOIP is used that server 141 and the combination telecommunication terminals would of necessity be on the same LAN and that all data coming from the NID would have to be communicated over this LAN. Stogel does disclose that telecommunication can be via Internet 179 but a telecommunication combination unit of block 130 communicates with Internet 179 via blocks 131, 151, 157, and 177, not via LAN 139. Figure 1 clearly illustrates that LAN 139 is distinct from network 150 and Internet 179. In addition, claim 2 clearly recites the purposes that are performed by the recited network.

In Section 8, the Final Office Action states the following:

Specifically, the "loop interface 113" connects the ATDA 100, located at customer premises, where the connection is via or at least through/transits a LAN [0021], where it is clear that a fully digital, packetized voice network is contemplated, since the connection from block 131 to block 151 specifies that block 151 provides access to remote data networks [0042]... Under the operating assumptions above, all the devices (133, 135, 137, 141, 145) are connected on the same LAN behind NID 131 (e.g. DSL modem [0040, 0029]). It is well known in the art that such devices have output ports for Internet/LAN (IEEE 802.3) connections, which can be connected to a LAN utilizing a multi-Internet hub, switch, router, and/or gateway. Indeed such devices (DSL modems) can have integral router/switch/hub for Internet, and existed prior to the crucial date of the instant application).

Paragraph [0042] does disclose that ATDA 100 can access remote database 183 via Internet 179, and it is possible that Internet 179 does comprise a WAN as disclosed in Paragraph [0021]. However, Figure 1 and corresponding text are very clear that server 141 accesses ATDA 100 via LAN 139 which clearly is not part of Internet 179. Further, there is no disclosure or suggestion in Stogel that server 141 would access

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ATDA 100 via Internet 179. Server 141 would access telecommunication status information from a combination telecommunication terminal (133, 100) via LAN 139 and a interface similar to LAN interface 119. Figure 1 clearly illustrates that LAN 139 and Internet 179 are two different networks. Further, assuming that NID is a DSL modem, there is no disclosure or suggestion in Stogel that server 141 or device 145 accesses ATDA 100 via such a DSL modem nor has the Final Office Action identified such a disclosure or suggestion in Stogel. Finally, there is no disclosure or suggestion in Stogel that LAN 139 is directly connected or is an integral part of NID 113 regardless of whether it is a DSL modem.

With respect to the first criteria, applicant will now comment on the propriety of combining the references in the manner performed in the Final Office Action. This rejection is hindsight reconstruction were the Final Office Action is using the application as a blueprint to find parts of the claimed invention in one or more references. Hindsight reconstruction has long been frowned upon:

A rejection based on section 103 clearly must rest on factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. In making this evaluation, all facts must be considered. The Patent Office has the initial duty of supplying the factual basis for this rejection. It may not, because it may doubt that the invention is patentable, resort to speculation, unfounded assumptions or **hindsight reconstruction** to supply deficiencies in its factual basis. In re Warner, 379 A.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967) cert. denied, 389 U.S. 1057 (1968) (emphasis in original).

Clearly, the Final Office Action engaged in hindsight reconstruction in applying the disclosure of Stogel to claim 2. One of ordinary skill in the art would not have anticipated the utilization of the system of Stogel as set forth in the Final Office Action. The Final Office Action states that the telecommunication terminal of claim 2 is equivalent to the combination of device 100 and a telephone (e.g. 133). The Final Office Action then equates the computer of claim 2 with server 141. The Final Office Action

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then finds that the steps of receiving, establishing, accessing, and displaying are performed by the combination of device 100 and telephone 133 along with server 141.

First, the step of displaying clearly states that the information is displayed to the user of the telecommunication terminal. One skilled in the art being presented with the fact that device 100 and telephone 133 can be an integral unit would not envision displaying the status information on server 141. Rather, one skilled in the art would utilize display 117 of device 100 since Stogel clearly teaches that call status information is displayed on display 117 in Paragraph [0047]. In addition, one skilled in the art would immediately recognize that since the call status information is to be displayed to the user of the telecommunication terminal that display 117 is physically part of the combination of the combination of device 100 and telephone 133. Hence, one skilled in the art would utilize display 117 to display the call status information to the user. Therefore, absent the teaching of claim 2, there is no reason why one skilled in the art would utilize the display of server 141 which in all likelihood is remote from the user versus utilizing display 117 which is located with the user when device 100 and telephone 133 are combined. Finally, there is nothing in the disclosures of Schnarel or Forlenza that would guide one skilled in the art to utilize of the display of server 141 rather than display 117.

With respect to the second criteria, this criteria requires a reasonable expectation of success. Since as was previously noted, server 141 is most likely remote from a telecommunication terminal incorporating unit 100 and telephone 133, a user of such a telecommunication terminal would have little use for call status information being displayed on server 141. In addition, since there is only one server 141, the utilization of server 141 to display call status information

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for a telecommunication terminal would limit its use to only one telecommunication terminal which would be of little use in anything but a single telephone system.

Applicant respectfully submits that claim 2 is patentable under 35 U.S.C. §103(a) for these reasons.

Dependent claims 3-7 are directly or indirectly dependent on claim 2 and are patentable for at least the same reasons as independent claim 2.

Claims 16-21 stand rejected under 35 U.S.C. § 103 (a).

Applicant respectfully submits that claim 16 is patentable under 35 U.S.C. §103(a) for the same reasons as claim 2.

Dependent claims 17-21 are directly or indirectly dependent on claim 16 and are patentable for at least the same reasons as independent claim 16.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A.

IX. EVIDENCE

No evidence pursuant to § 1.130, 1.131, or 1.132, or entered by or relied upon by the Examiner, is being submitted.

X. RELATED PROCEEDINGS

No related proceedings as indicated in II. above.

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Respectfully submitted,

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 10/799,423

1 1. (Canceled)

1 2. (Previously Amended) A method for providing
2 telecommunication terminal status information to people having at least
3 one of poor visual acuity and poor hearing, comprising the steps of:
4 receiving telecommunication terminal status information by a
5 telecommunication terminal via a network;
6 establishing direct communication with the telecommunication
7 terminal via the network by a computer controlling a visual display
8 separate from the telecommunication terminal;
9 directly accessing the telecommunication terminal status
10 information from telecommunication terminal by the computer via the
11 network;
12 emphasizing the accessed telecommunication terminal status
13 information using visual enhancement; and
14 displaying the emphasized visual telecommunication terminal
15 status information on the visual display to a user of the telecommunication
16 terminal having at least one of poor visual acuity and poor hearing.

1 3. (Previously Amended) The method of claim 2 wherein the
2 telecommunication terminal status information is alert information for the
3 telecommunication terminal.

1 4. (Original) The method of claim 2 wherein the step of
2 emphasizing comprises displaying the transmitted telecommunication
3 terminal status information on the visual display in a larger format than

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4 that used to display the telecommunication terminal status information on
5 the telecommunication terminal.

1 5. (Original) The method of claim 2 wherein the step of
2 emphasizing comprises displaying the transmitted telecommunication
3 terminal status information on the visual display in different visual form.

1 6. (Original) The method of claim 5 wherein the different visual
2 form is one of at least: a large flashing portion of the display, animation of
3 the display, highly visible contrast ratios of the display, highly visible fonts
4 on the display, highly visible colors on the display, and a large unique
5 portion of the display.

1 7. (Original) The method of claim 6 further comprises the step
2 of generating audio information to alert a user of the telecommunication
3 terminal to the telecommunication terminal status information.

1 8. (Canceled)

1 9. (Canceled)

1 10. (Canceled)

1 11. (Canceled)

1 12. (Canceled)

1 13. (Canceled)

1 14. (Canceled)

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1 15. (Canceled)

1 16. (Previously Amended) A computer-readable medium for
2 providing telecommunication terminal status information to people having
3 at least one of poor visual acuity and poor hearing, comprising computer-
4 executable instructions configured for:

5 receiving telecommunication terminal status information by a
6 telecommunication terminal via a network;

7 establishing direct communication with the telecommunication
8 terminal via the network by a computer controlling a visual display
9 separate from the telecommunication terminal;

10 directly accessing the telecommunication terminal status
11 information from telecommunication terminal by the computer via the
12 network;

13 emphasizing the accessed telecommunication terminal status
14 information using visual enhancement; and

15 displaying the emphasized visual telecommunication terminal
16 status information on the visual display to a user of the telecommunication
17 terminal having at least one of poor visual acuity and poor hearing.

1 17. (Previously Amended) The computer-readable medium of
2 claim 16 wherein the telecommunication terminal status information is
3 alert information for the telecommunication terminal.

1 18. (Previously Amended) The computer-readable medium of
2 claim 16 wherein the emphasizing comprises displaying the transmitted
3 telecommunication terminal status information on the visual display in a
4 larger format than that used to display the telecommunication terminal
5 status information on the telecommunication terminal.

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1 19. (Previously Amended) The computer-readable medium of
2 claim 16 wherein the emphasizing comprises displaying the transmitted
3 telecommunication terminal status information on the visual display in
4 different visual form.

1 20. (Previously Amended) The computer-readable medium of
2 claim 19 wherein the different visual form is one of at least: a large
3 flashing portion of the display, animation of the display, highly visible
4 contrast ratios of the display, highly visible fonts on the display, highly
5 visible colors on the display, and a large unique portion of the display.

1 21. (Previously Amended) The computer-readable medium of
2 claim 20 further comprises generating audio information to alert a user of
3 the telecommunication terminal to the telecommunication terminal status
4 information.

1 22. (Canceled)

1 23. (Canceled)

1 24. (Canceled)

1 25. (Canceled)

1 26. (Canceled)

1 27. (Canceled)

1 28. (Canceled)

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- 1 29. (Canceled)
- 1 30. (Canceled)
- 1 31. (Canceled)
- 1 32. (Canceled)
- 1 33. (Canceled)
- 1 34. (Canceled)
- 1 35. (Canceled)
- 1 36. (Canceled)
- 1 37. (Canceled)
- 1 38. (Canceled)

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APPENDIX B

None.

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APPENDIX C

None.